

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

G&V INC.,  
L&Z PROPERTIES LLC,  
GEORGE DUZEY,  
ZIRKA DUZEY,  
VASYLY SHIBANOV and  
LIDIA SHIBANOV,

Plaintiffs,

vs.

Case No. 2003-0562-CZ

MULLIN & ASSOCIATES PLC,  
TURKIA AWADA MULLIN and  
SALEH, D'ANDREA & MULLIN PLC,  
Jointly and Severally,

Defendants.

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OPINION AND ORDER

Plaintiffs G&V Inc., L&Z Properties LLC, George Duzey, Zirka Duzey, Vasyly Shibarov and Lidia Shibarov move for a new trial or additur.

I. BACKGROUND

Plaintiffs filed this action on February 7, 2003 regarding their purchase of a gas station and related food sale business. Plaintiffs essentially alleged the value of the business was inflated and defendants Mullin & Associates, P.L.C.; Turkia Awada Mullin and Saleh, D'Andrea & Mullin, P.L.C. had provided legal representation to both plaintiffs and the sellers of the business.

Plaintiffs eventually entered into settlements/dismissals with the sellers, appraisal company and loan company. Plaintiffs' claim for breach of fiduciary duty was dismissed in an



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*Opinion and Order* dated May 3, 2005. Plaintiffs settled all of their remaining claims except legal malpractice against defendants Mullin & Associates, Mullin and Saleh, D'Andrea & Mullin during trial; the matter only proceeded to verdict on plaintiffs' legal malpractice claim against defendants Mullin & Associates and Mullin ("Mullin").<sup>1</sup> The jury returned a verdict finding defendants Mullin had been professionally negligent but that their negligence was not a proximate cause of any of plaintiffs' damages. A judgment of no cause of action was entered December 5, 2005 in favor of defendants Mullin against plaintiffs.

Plaintiffs now move for a new trial or additur.

## II. ANALYSIS

### A. New Trial

In *People v Jehnson*, 183 Mich App 305, 310-311; 454 NW2d 250 (1990), the court stated:

A trial court may grant a new trial whenever the substantial rights of all or some of the parties are materially affected by an irregularity in the proceedings or where an order of the court or an abuse of discretion denied the moving party a fair trial. MCR 2.611(A)(1)(a). Such a motion may be granted on any ground which would support appellate reversal of a conviction or because the verdict resulted in a miscarriage of justice. MCR 6.431(B). A decision on a motion for a new trial will not be reversed absent a clear abuse of discretion. *People v Bradshaw*, 165 Mich App 562, 567; 419 NW2d 33 (1988).

Plaintiffs contend that the admission of evidence of the sale of business in 2004 for the price of \$2,400,000.00 was error. It is argued that this sale resulted from a settlement with certain Defendants and, hence, its admission into evidence was precluded by MRE 408.

As a preliminary matter, the plain language of MRE 408 only precludes admission of evidence regarding compromises that would "prove liability for or an invalidity of the claim or its amount". Evidence of the 2004 sale was not offered for any precluded purpose. The 2004 sale

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<sup>1</sup>It is unclear what happened to plaintiffs' claims against defendant Saleh, D'Andrea and Mullin, P.L.C.

price of \$2,400,000 clearly went to the issue of plaintiffs' claimed damages, was offered as a comparison to the 2001 sale price of \$2,600,000 and challenged the credibility of plaintiffs' appraised value of the business in 2001. Further, the record indicates plaintiffs acknowledged the 2004 sale price would have been relevant and admissible if made to a nonparty, interjected the issue of the 2004 sale having been made as part of a settlement<sup>2</sup> and then requested a special jury instruction regarding the 2004 sale price. While the Court is satisfied this evidence was properly received, it also agrees with defendants Mullin's contention that plaintiffs can not now assign error to this issue. *Hilgendorf v St John Hospital & Medical Center Corp*, 245 Mich App 670, 683; 630 NW2d 356 (2001).

In regard to plaintiffs' claim of error concerning the expert testimony of Robert McAuliffe, suffice it to say the Court finds no merit in this assertion. Further, the jury verdict renders this claim moot. As previously noted, the jury found defendants Mullin had been professionally negligent but that defendants Mullin's negligence was not a proximate cause of any of plaintiffs' damages. Hence, the jury *did not have to address or weigh damages*. It is important to note plaintiffs' brief fails to address this simple detail,<sup>3</sup> an aspect that is fatal to their remaining arguments regarding damages: any error(s) regarding expert witnesses and their damages testimony, having not been reached by the jury, could only have been harmless.<sup>4</sup>

Moreover, to assign error to the single and passing reference to Abdulla Al-Jufairi's prior status as a defendant is, following what was a multi-day trial, clearly grasping at straws.

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<sup>2</sup>Plaintiffs were free to challenge the 2004 sale price to the extent they believed different conditions (economic and/or physical) affected the price from what they should have paid in 2001.

<sup>3</sup>Perhaps because plaintiffs admittedly proceeded to closing despite knowledge of irregularities gleaned from running the businesses before closing and also had obtained their own legal counsel regarding the purchase.

<sup>4</sup>It is also essential to note Charles Esser, despite being initially stricken, was permitted to testify in rebuttal to Robert McAuliffe.

Therefore, plaintiffs have not established grounds for a new trial.

B. Additur

The jury verdict is not inherently illogical. Recall, n 3, *supra*.

Therefore, plaintiffs have not established grounds for additur. *Palenkas v Beaumont Hospital*, 432 Mich 527; 443 NW2d 354 (1989), and *Dooms v Stewart Bolling & Co*, 68 Mich App 5; 241 NW2d 738 (1976).

III. CONCLUSION

For the reasons set forth above, plaintiffs G&V Inc., L&Z Properties LLC, George Duzey, Zirka Duzey, Vasyly Shibanov and Lidia Shibanov's motion for:

A. A new trial is DENIED under MCR 2.611(A)(1)(a), (e) and (g); and

B. Additur is DENIED under MCR 2.611(A)(1)(c), (d) and (e).

This matter remains closed. MCR 2.602(A)(3).

IT IS SO ORDERED.

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Roland L. Olzark, Visiting Circuit Court Judge

Date:

JUN - 9 2006

RLO/aac

cc: Larry Bennett/Kaveh Kashef, Attorneys at Law  
David C. Anderson/Michael J. Sullivan, Attorneys at Law

**DIANE M. DRUZINSKI**  
**CIRCUIT JUDGE**

JUN - 9 2006

**A TRUE COPY**  
CARMELLA SABAUGH, COUNTY CLERK

By: [Signature] Court Clerk